

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Dutton & Parra

Analyst: Rachel Coco

Bill Number: AB 1073

Related Bills: See Legislative History

Telephone: 845-4328

Amended Date: May 6, 2003

Attorney: Patrick Kusiak

Sponsor: _____

SUBJECT: Exclusion/Death Gratuity Received By A Survivor Of Deceased Member, Former Member Or Person Entering Service Of The U.S. Armed Forces

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _____.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED/AMENDED _____ STILL APPLIES.

☒ OTHER - See comments below.

SUMMARY

This bill would not tax the death gratuity paid to the survivor of a deceased member of the Armed Forces of the United States.

SUMMARY OF AMENDMENTS

The May 6, 2003, amendment eliminated the dollar limitation and added a coauthor.

The April 21, 2003, amendment removed language exempting qualified nonprescription drugs from tax under the Sales and Use Tax Law and replaced it with language that would exclude from gross income certain payments received by a survivor of a deceased member of the Armed Forces of the United States.

This is the department's first analysis of this bill.

PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to provide tax relief to surviving family members of deceased Armed Forces personnel.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately and operative for taxable years beginning on or after January 1, 2003.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Department Director

Date

Gerald H. Goldberg

5/15/03

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

Existing federal and state tax laws provide that gross income includes all income from whatever source derived, including compensation for services, business income, gains from property, interest, dividends, rents, and royalties, unless specifically excluded.

Existing federal law provides a death gratuity in the amount of \$6,000 payable to a qualified survivor of a deceased member, former member, or person entering the service of the Armed Forces of the United States.

Under existing federal tax law, to which California law conforms, \$3,000 of the gratuity is currently excludable from gross income.

Pending federal legislation, known as the Armed Forces Tax Fairness Act of 2003 (H.R. 878), would, among other things, exclude from gross income the entire amount of the death gratuity. Other proposed federal legislation, known as the Military Death Gratuity Improvement Act of 2003 (S. 704), would increase the gratuity amount to \$12,000 effective on September 10, 2001.

THIS BILL

This bill would exclude from gross income the federal death gratuity paid to a survivor of a member, former member, or person entering the service of the Armed Forces of the United States.

The bill would define "death gratuity," "living survivor," and "deceased member, former member, or person entering the service of, the Armed Forces of the United States" by referencing federal law.

Under federal law "death gratuity" is defined as the lump sum payment in the amount of \$6,000 paid to qualified survivors of deceased members of the Armed Forces.

Federal law defines "Living survivor" as the surviving spouse, children, parents, or siblings of the member.

"Deceased member, former member, or person entering the service of, the Armed Forces of the United States" is defined under federal law as a member who dies while:

- On active duty,
- On inactive duty training,
- On active duty for training, or
- Traveling to or from, or while at a place for, final acceptance in an Armed Force.

LEGISLATIVE HISTORY

SB 4 (Hollingsworth, 2003/2004) would exclude from gross income interest on insurance payments received by a widow or child of an individual that died in combat while on active duty with any branch of the Armed Forces. This bill is currently in the Senate Revenue and Taxation Committee.

SB 948 (Morrow, 2003/2004) would provide that all earned income of a spouse of a member of the Armed Forces who dies as a result of certain action be exempt from income taxes for the year of the member's death and the following three years. This bill is currently in the Senate Appropriations Committee.

AB 294 (Zettel & Kehoe, 2001/2002) would have excluded from taxation all survivor benefits or payments received under several federal programs that provide benefits to survivors of deceased retirees of the armed forces. AB 294 failed to pass out of the Assembly Revenue and Taxation Committee.

OTHER STATES' INFORMATION

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's tax laws and population

Illinois, Massachusetts, Michigan, New Jersey, and New York do not tax military pension income or survivorship benefits received from the U.S. uniformed services.

Minnesota taxes all income, including pensions and annuities, received as a resident of the state regardless of the source.

Florida has no personal income tax; therefore the exclusion proposed by this bill is not applicable.

FISCAL IMPACT

This bill is would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

Based on the discussion below, the revenue loss from this bill is estimated to be negligible, less than \$50,000 annually

Revenue Discussion

Revenue losses are based on information regarding the number of military deaths for the last 23 years. This information was obtained from the Department of Defense prepared by the Washington Headquarters Services Directorate of Information Operations and Services. During this period total deaths of active military members (accidental, hostile action, homicide, illness, pending, self inflicted, and terrorist attack) average approximately 1,530 annually, with a high of 2,465 in 1983 and a low of 774 in 2000. For this analysis the average annual number of military deaths was used under the assumption that approximately 11% of all military deaths would have California beneficiaries.

This yields approximately 168 qualifying beneficiaries ($1,530 \times 11\% = 168$), with additional benefit exclusions of \$3,000 (total exclusion \$6,000 less the \$3,000 exclusion allowable under current law) for a total of approximately \$500,000 ($168 \times \$3,000 = \$504,000$) in additional excludable income. Assuming an average marginal tax rate of 5%, the revenue loss would be approximately \$25,000 annually.

LEGISLATIVE STAFF CONTACT

Rachel Coco
Franchise Tax Board
845-4328
Rachel.Coco@ftb.ca.gov

Brian Putler
Franchise Tax Board
845-6333
Brian.Putler@ftb.ca.gov